

**Before the  
Federal Communications Commission  
Washington, DC 20544**

In the Matter of	)	
	)	
Tombigbee Communications, LLC	)	WC Docket 09-197
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
Pursuant to Section 214(e)(6) of the	)	
Communications Act of 1934, as amended	)	

To: The Commission

**PETITION FOR LIMITED WAIVER AND EXTENSION OF  
ETC DESIGNATION DEADLINE**

Pursuant to 47 C.F.R. § 1.3 and for good cause, Tombigbee Communications, LLC (“Tombigbee”) through its below-named counsel, respectfully requests a limited waiver of the Eligible Telecommunications Carrier (“ETC”) Designation deadline of February 25, 2019 for the Federal Communications Commission’s (the “FCC,” or, in the alternative, the “Commission”) Connect America Fund II (“CAF”) Auction 903, and an extension of said deadline to ten (10) days after the FCC issues its order.

**I. Introduction and Background**

Tombigbee was formed in June 2017 to construct and operate a new state-of-the-art Fiber To The Home (“FTTH”) network to provide high-speed broadband Internet access and Voice over Internet Protocol (“VoIP”) services to underserved residents of north west Alabama who currently lack sufficient and affordable access to such services.<sup>1</sup> Tombigbee applied for and was awarded support to serve 100 census blocks (279 locations) in the State of Alabama<sup>2</sup> pursuant to

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<sup>1</sup> Tombigbee Communications, LLC is a limited liability company organized under the laws of the State of Alabama.

<sup>2</sup> A list of the census blocks is attached as Exhibit A.

the CAF Auction 903.<sup>3</sup> To finalize a CAF II award, the Commission requires documentation of ETC Designation within 180 days from the date of the award.<sup>4</sup> Because the Commission announced its CAF II awards on August 28, 2018, the deadline to establish ETC designation is February 25, 2019.<sup>5</sup> Tombigbee has filed a petition for ETC designation with the Commission, but such petition has not yet been acted upon and ETC designation awarded.

## **II. Due Diligence on the Part of Tombigbee with Respect to ETC Designation Justifies a Waiver and a Brief Extension of Time**

Within thirty days of notice of the CAF award, Tombigbee contacted legal counsel to investigate the process for obtaining ETC designation from the Alabama Public Service Commission for the areas located within the state of Alabama. Legal counsel for Tombigbee investigated the process and ultimately contacted Darrell A. Baker, Director, Utility Services Division for the Alabama Public Service Commission, to discuss the process for obtaining ETC designation in the State of Alabama for such areas. Legal counsel for Tombigbee was informed that the APSC could designate Tombigbee as an ETC prior to the filing deadline and described the applications and process that would be required. Operating with the understanding that the APSC would exercise jurisdiction over Tombigbee's ETC designation, Tombigbee, through its legal counsel, prepared a voluminous application for submission to the APSC in accordance with APSC rules for such designation.

However, in January of 2019, counsel for Tombigbee was informed by the APSC that the APSC would not be exercising jurisdiction over broadband internet and VoIP and that

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<sup>3</sup> Public Notice, *Connect America Fund Phase II (Auction 903) Closes, Winning Bidders Announced, FCC Form 683 Due October 15, 2018, DA 18-887 (released August 28, 2018) (Phase II Auction Closing Public Notice)*).

<sup>4</sup> I Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903, WC Dkt. No. 10-90, FCC 18-6, (rel. February 1, 2018). See Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903, WC Dkt. No. 10-90, FCC 18-6, (rel. February 1, 2018).

<sup>5</sup> See <https://ilwww.fcc.gov/ilauction,1903> (last visited February 12, 2019).

Tombigbee would still need to submit its application to the APSC but that the APSC would not act upon it and would instead issue a denial of jurisdiction that would need to be filed with the FCC for ETC Designation. Following research and discussions with various parties, Tombigbee proceeded to obtain the letter from the APSC and filed a petition with the FCC for ETC designation on February 22, 2019.

Tombigbee filed its petition with the FCC for ETC designation prior to the February 25, 2019 deadline. Correspondence received from Auction 903 on Tuesday, February 19, 2019 stated that “As a reminder, the final Auction 903 long-form application deadline is 6:00 p.m. ET on February 25, 2019. All required information must be uploaded to the FCC Form 683 long-form application and you must click the CERTIFY & SUBMIT button on the “Certify & Submit” screen prior to 6 p.m. ET to meet the deadline.” It went on to say that “If you have already filed an ETC application with the FCC, you do not need to file a petition for waiver of the deadline if the FCC has not yet issued an ETC designation order. If you plan to file an ETC application with the FCC but have not yet filed such an application, you will need to file a petition for waiver of the deadline with your FCC Form 683 long-form application.” Counsel for Tombigbee discussed this language with Nissa Laughner with the FCC and was led to believe that a petition for waiver of the ETC designation was not required if the petition for ETC designation had been filed prior to the February 25, 2019 deadline. In subsequent discussions with Ms. Laughner on February 25, 2019, she advised counsel for Tombigbee to nevertheless file a petition for waiver out of an abundance of caution. Accordingly, Tombigbee, by and through its legal counsel, is hereby notifying the FCC that Tombigbee has filed a request for ETC designation with the FCC that is pending and hereby requests a limited waiver and an extension of time to file such designation pending action of the FCC on Tombigbee’s petition for ETC

designation.

### **III. Grant of the Requested Limited Waiver and Extension of Time is Warranted and Would Serve the Public Interest**

Pursuant to Section 1.3 of its Rules, the Commission may waive any provision of the Rules for good cause shown or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's the Commission's purposes than strict enforcement of the Rule.<sup>6</sup> In Tombigbee's case, there is good cause to grant the limited waiver and extension of time for ETC Designation in Alabama, and strict compliance with the FCC's February 25<sup>th</sup> deadline is contrary to the public interest.

The FCC's objective in establishing the Connect America Fund was to close "the digital divide for all Americans, including those in rural areas of our country."<sup>7</sup> Consistent with the Commission's CAF II objectives, Tombigbee would provide underserved consumers in designated rural Alabama census blocks broadband internet and VoIP service.

Tombigbee is a wholly-owned subsidiary of Tombigbee Electric Cooperative, Inc. ("TEC"), a non-profit electric distribution cooperative incorporated in 1941 to provide electric services to rural areas of Marion, Lamar, and portions of Fayette counties in Alabama. TEC has over 6,500 members located in areas served by over 2,175 miles of electric service lines primarily in Marion, Lamar, Winston and Fayette Counties in Alabama. TEC formed Tombigbee in June 2017 to construct and operate a new state-of-the-art Fiber To The Home ("FTTH") network to provide high-speed broadband Internet access and Voice over Internet Protocol ("VoIP") services to cooperative members and other residences of those counties who

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<sup>6</sup> See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972)).

<sup>7</sup> See Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903, WC Dkt. No. 10-90, FCC 18-6, ¶1 (rel. February 1, 2018).

currently lack sufficient and affordable access to such services. As of October 2018, Tombigbee has more than 425 miles of both transport and distribution fiber built, with over 3,000 customers currently receiving broadband Internet services and/or VoIP services and more than 3,000 customers signed up and waiting for construction to be completed in their geographic area.

While the heart of Tombigbee's service area is in rural areas that do not have cable or other high-speed fixed line options, the number of persons who have signed up for service in such a short period of time and the number of persons requesting services are a testament to the need for this service in the areas for which Tombigbee has requested ETC designation from the FCC.

#### **IV. Conclusion**

Because Tombigbee diligently pursued ETC designation following its award of CAF II funding, and because it would serve the public interest, Tombigbee, by and through its counsel, respectfully requests a limited waiver of the February 25<sup>th</sup> deadline for ETC designation and an extension of ten (10) days following the FCC's issuance of its order approving Tombigbee's ETC designation in the census blocks in Alabama for which such designation is sought.

Tombigbee also respectfully requests expeditious Commission action on this request.

Respectfully submitted,  
**Tombigbee Communications, LLC**

By: /s/ Peter J. Hardin

Peter J. Hardin  
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February 22, 2019

## EXHIBIT A

### LIST OF CENSUS BLOCKS IN WHICH TOMBIGBEE SEEKS ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

<u>Census Block</u>	<u>FCC Item</u>	<u>State</u>	<u>County</u>
10570200002006	AL-057-0200002	AL	Fayette
10570200002053	AL-057-0200002	AL	Fayette
10570201001085	AL-057-0201001	AL	Fayette
10570201002104	AL-057-0201002	AL	Fayette
10570201002108	AL-057-0201002	AL	Fayette
10570201003066	AL-057-0201003	AL	Fayette
10570201003091	AL-057-0201003	AL	Fayette
10570201003094	AL-057-0201003	AL	Fayette
10570201003096	AL-057-0201003	AL	Fayette
10570201003102	AL-057-0201003	AL	Fayette
10570201003160	AL-057-0201003	AL	Fayette
10570202003018	AL-057-0202003	AL	Fayette
10570202003098	AL-057-0202003	AL	Fayette
10570203004005	AL-057-0203004	AL	Fayette
10570203004032	AL-057-0203004	AL	Fayette
10570203004036	AL-057-0203004	AL	Fayette
10570203004048	AL-057-0203004	AL	Fayette
10570203004049	AL-057-0203004	AL	Fayette
10570203004050	AL-057-0203004	AL	Fayette
10570203004070	AL-057-0203004	AL	Fayette
10570203005026	AL-057-0203005	AL	Fayette
10750300001051	AL-075-0300001	AL	Lamar
10750300001077	AL-075-0300001	AL	Lamar
10750300001094	AL-075-0300001	AL	Lamar
10750300001110	AL-075-0300001	AL	Lamar
10750300001119	AL-075-0300001	AL	Lamar
10750300002081	AL-075-0300002	AL	Lamar
10750300002192	AL-075-0300002	AL	Lamar
10750300005081	AL-075-0300005	AL	Lamar
10750301001001	AL-075-0301001	AL	Lamar
10750301001011	AL-075-0301001	AL	Lamar
10750301001064	AL-075-0301001	AL	Lamar
10750301001067	AL-075-0301001	AL	Lamar
10750301001076	AL-075-0301001	AL	Lamar
10750301001084	AL-075-0301001	AL	Lamar
10750301001113	AL-075-0301001	AL	Lamar
10750301002010	AL-075-0301002	AL	Lamar

10750301002012	AL-075-0301002	AL	Lamar
10750301003021	AL-075-0301003	AL	Lamar
10750301007040	AL-075-0301007	AL	Lamar
10750301007082	AL-075-0301007	AL	Lamar
10750301007084	AL-075-0301007	AL	Lamar
10750302001003	AL-075-0302001	AL	Lamar
10750302001018	AL-075-0302001	AL	Lamar
10750302002005	AL-075-0302002	AL	Lamar
10750302002006	AL-075-0302002	AL	Lamar
10750302002025	AL-075-0302002	AL	Lamar
10750302002039	AL-075-0302002	AL	Lamar
10750302002068	AL-075-0302002	AL	Lamar
10750302002097	AL-075-0302002	AL	Lamar
10750302002098	AL-075-0302002	AL	Lamar
10750302002100	AL-075-0302002	AL	Lamar
10750302002117	AL-075-0302002	AL	Lamar
10750302002119	AL-075-0302002	AL	Lamar
10750302002121	AL-075-0302002	AL	Lamar
10750302002135	AL-075-0302002	AL	Lamar
10750302002137	AL-075-0302002	AL	Lamar
10750302003005	AL-075-0302003	AL	Lamar
10750302003012	AL-075-0302003	AL	Lamar
10750302003064	AL-075-0302003	AL	Lamar
10750302004033	AL-075-0302004	AL	Lamar
10750302004054	AL-075-0302004	AL	Lamar
10750302004095	AL-075-0302004	AL	Lamar
10750302004129	AL-075-0302004	AL	Lamar
10939640002016	AL-093-9640002	AL	Marion
10939640005029	AL-093-9640005	AL	Marion
10939641003142	AL-093-9641003	AL	Marion
10939642001042	AL-093-9642001	AL	Marion
10939642001044	AL-093-9642001	AL	Marion
10939642001058	AL-093-9642001	AL	Marion
10939642001066	AL-093-9642001	AL	Marion
10939642001208	AL-093-9642001	AL	Marion
10939643001005	AL-093-9643001	AL	Marion
10939643001104	AL-093-9643001	AL	Marion
10939643001112	AL-093-9643001	AL	Marion
10939644001172	AL-093-9644001	AL	Marion
10939644001198	AL-093-9644001	AL	Marion
10939644001205	AL-093-9644001	AL	Marion
10939644002028	AL-093-9644002	AL	Marion
10939644002044	AL-093-9644002	AL	Marion

10939644002092	AL-093-9644002	AL	Marion
10939644002093	AL-093-9644002	AL	Marion
10939644002107	AL-093-9644002	AL	Marion
10939644003044	AL-093-9644003	AL	Marion
10939644004052	AL-093-9644004	AL	Marion
10939644004086	AL-093-9644004	AL	Marion
10939644004087	AL-093-9644004	AL	Marion
10939644004114	AL-093-9644004	AL	Marion
10939644004122	AL-093-9644004	AL	Marion
10939645001054	AL-093-9645001	AL	Marion
10939645001055	AL-093-9645001	AL	Marion
10939645001082	AL-093-9645001	AL	Marion
10939645003034	AL-093-9645003	AL	Marion
10939646001089	AL-093-9646001	AL	Marion
10939646001161	AL-093-9646001	AL	Marion
10939646002079	AL-093-9646002	AL	Marion
10939646003030	AL-093-9646003	AL	Marion
10939646003076	AL-093-9646003	AL	Marion
10939646003130	AL-093-9646003	AL	Marion
11339658002014	AL-133-9658002	AL	Winston



## DECLARATION OF STEVE F. FOSHEE

Steve F. Foshee, after being duly sworn, states the following:

1. I have personal knowledge of the facts and information set forth in this Affidavit and I am competent to testify to these facts if called as a witness.
2. I am the President and Chief Executive Officer of Tombigbee Electric Cooperative, the sole member of Tombigbee Communications, LLC ("Tombigbee"). Acting on behalf of Tombigbee, I have read the Request for Limited Waiver and Extension of ETC Designation on Deadline to which this Affidavit is attached. I have knowledge of the facts stated in the Petition and those facts are true to the best of my knowledge and belief.



Steve F. Foshee  
President and Chief Executive Officer of  
Tombigbee Electric Cooperative, the sole member  
of Tombigbee Communications, LLC